

Maryland Judicial Ethics Committee

Opinion Request Number: 2001-10

Date of Issue: July 13, 2001

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Judge-Candidate Not to Participate in Joint Fund-Raiser with Non-Judicial Candidate

Issue: May a judge who is a candidate for election participate in a joint fund-raiser for the judge and the register of wills?

Answer: No.

Discussion: A recently appointed judge who is a candidate for election has asked whether that judge may participate in a joint fund-raiser for the judge and for the register of wills. The judge has directed the Committee's attention to [Opinion Request No. 1985-04] (February 14, 1986). The Committee believes that [Opinion Request No. 1985-04] is factually distinguishable from the inquirer's situation and is, therefore, inapposite.

[Opinion Request No. 1985-04] involved a request by a judge, standing for election, to appear on a "ticket" with non-judicial candidates, a request that the Committee sanctioned. However, in its opinion, the Committee warned that its views were not to be extended to "activities beyond a judge's permitting his or her name to appear on the same ticket as those of other candidates." The current request contains the additional elements of an apparent endorsement for election of a candidate for a non-judicial office with fund raising benefitting that candidate. It is possible that the funds raised at this event will be commingled, apparently to be distributed in accordance with some formula.

In [Opinion Request No. 1978-02] (May 8, 1978) this Committee approved the attendance by a judge who was standing for election at fund-raisers to promote the candidacy of others, recognizing that:

... attendance at political functions sponsored by or held to benefit particular candidates for various offices, such as fundraising dinners, is a common and practically necessary way in which other candidates for elected office become known and promote their own candidacy. ...

In this instance, the judge is not merely an attendee at a political function, rather, he/she is a named beneficiary of the event along with the non-judicial candidate. Canon 5B(2) of the Code of Judicial Conduct states in part that a judge who is a candidate "should not ... publicly endorse a candidate for non-judicial office".

In an opinion directly on point, the Michigan Judicial Ethics Committee concluded that: The inquiring [judicial] candidate asks whether ethical restrictions are affected if the candidate is only one of several candidates benefitted by the independent fund-raiser. This contingency is not specifically addressed by MCJC [Michigan Code of Judicial Conduct] and does not affect the rationale of MCJC 2A, 2B or MCJC 7B(1)(a). A judge may accept proceeds as one of several candidates benefitting from an independent fund-raiser, within the same parameters as would apply to the judge's

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acceptance of funds as the sole beneficiary of the event. However, if a candidate for political office also benefits from the fund-raiser, this factor may have a significant impact on the appearance of impropriety and impartiality.

National Reporter on Legal Ethics and Professional Responsibility, JI-111, March 21, 1997.

Similarly, a review commission of five judges appointed by the Ohio Supreme Court to hear the complaint against two candidates for judicial office concluded that the two candidates for the office of Judge of the Common Pleas Court of Hamilton County who permitted their names to be listed on an invitation to a fund-raiser for the re-election of the Hamilton County Recorder, had violated the Ohio Code of Judicial Conduct. The panel stated:

The complaint against the respondents asserts that they have violated the above-stated Canon 7(B)(2)(b) of the Ohio Code of Judicial Conduct [Maryland's Canon 5B(2)] by having their names on the invitation to Bolton's [the candidate for Recorder] fund-raiser. This panel finds that the respondents have violated that section of the Ohio Code of Judicial Conduct. The fund-raiser was clearly "public" as that term is understood by the panel. The inclusion of the respondents' names on the invitation that stated the mission of the fund-raiser as "supporting Eve Bolton's Re-election" to the public office of county recorder can only be seen as endorsing Bolton. This panel finds that the respondents "publicly endorse[d] *** a candidate for another public office" in violation of Canon 7(B)(2)(b).

In re Judicial Campaign Complaint Against Keys et al. Nos. 96-1814 and 96-1815, 80 Ohio Misc. 2d 1, 671 N.E.2d 1124, 1125, 1996 Ohio Misc. LEXIS 64 (September 11, 1996).

In 1992, the Ohio Judicial Ethics Committee had earlier concluded that although an incumbent judge may attend a political dinner, it would be improper for that judge to sit at the speaker's table and introduce a partisan candidate for public office under Ohio's Canon 7(1)(b). Opinion 92-11 (April 10, 1992). Ohio's Canon 7(1)(b) contains the same prohibition against public endorsement of candidates for non-judicial office in Maryland's Canon 5B(2).

The joint fund-raiser which is proposed here would, in the Committee's view, constitute a public endorsement by the judge of the candidate for the office of register of wills and would violate Canon 5B(2) of the Maryland Code of Judicial Conduct. Therefore, the Committee must conclude that the judge may not participate in a joint fund-raiser for the judge and for the register of wills.